

1 STATE OF NEW YORK : NASSAU COUNTY

2 SUPREME COURT PART 11

3 - - - - -X

4 THE PEOPLE OF THE STATE OF NEW YORK, SCI/IND. NO.
167N-05

5 -against-

6 TRIAL

7 MARK ORLANDO,

Defendant.

8 - - - - -X

9 262 Old Country Road
Mineola, New York
June 3, 2005

10

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12 B e f o r e:

13 HON. DAVID P. SULLIVAN, Supreme Court Justice

14 A p p e a r a n c e s:

15

16 HON. DENIS DILLON
District Attorney, Nassau County
17 By: ROBERT T. HAYDEN, ESQ.
Assistant District Attorney

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19

20 DENNIS LEMKE, ESQ.
Attorney for Defendant
114 Old Country Road
21 Mineola, N.Y. 11501

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23 Mary Ocskai
Official Court Reporter

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1 THE CLERK: Ready for the prospective jurors
2 to enter the courtroom?

3 MR. HAYDEN: Yes.

4 MR. LEMKE: Yes.

5 THE CLERK: Bring them in.

6 THE CLERK: Continued case on trial,
7 indictment 167N-2005, People of the State of New York
8 versus Mark Orlando.

9 People ready?

10 MR. HAYDEN: People ready, Your Honor.

11 THE CLERK: Defendant ready to proceed?

12 MR. LEMKE: Defendant ready.

13 THE CLERK: Let the record reflect the
14 presence of Mr. Orlando and the twelve remaining
15 prospective jurors.

16 THE COURT: Good morning, ladies and
17 gentlemen. We're going to call out your name and you
18 will come up and sit in the seat. You saw everything
19 yesterday so you know the procedure. If there's any
20 problems, let me know. And what will happen is I will
21 briefly question you, not even as extensively as
22 yesterday. I will let the attorneys talk to you. If
23 there's any problem you let us know. Okay. Thank you.

24 THE CLERK: Seat number one, Jennifer Zuzio,
25 Z-U-Z-I-O.

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1 Gary Pollack, P-O-L-L-A-C-K, seat number two.

2 Seat number three --

3 A PROSPECTIVE JUROR: I have a problem sitting
4 for two weeks.

5 THE COURT: You got something going on?

6 A PROSPECTIVE JUROR: I am in business by
7 myself. All these people are --

8 THE COURT: Okay.

9 Consent?

10 MR. HAYDEN: Consent.

11 MR. LEMKE: Consent.

12 Remember you heard me say to a lot, all this is
13 going to do, you will come into the seats, we will ask
14 some questions. Doesn't mean you will remain on this
15 case. Even if I excuse you from here, you got to go to
16 the commissioner of jurors, even though it's Friday
17 doesn't mean they'll discharge you. Send you somewhere
18 else today or have you come back on Monday. Okay. At
19 least now you know here we're going to be two weeks at
20 the longest, and you know what this case is about.

21 THE CLERK: Edward McGrann.

22 A PROSPECTIVE JUROR: I can't do the two
23 weeks. It would create a financial hardship.

24 THE COURT: I am sorry.

25 A PROSPECTIVE JUROR: I can't do the two

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1 weeks. It would create a financial hardship.

2 THE COURT: Any objection?

3 MR. HAYDEN: No.

4 MR. LEMKE: None.

5 THE COURT: Okay.

6 THE CLERK: Joseph Dottino, D-O-T-T-I-N-O,
7 seat number two.

8 Seat number three, Anthony DiSalvo, D-I-S-A-L-V-O.

9 Seat number three.

10 Seat number four, Steven Kaplan, K-A-P-L-A-N. Seat
11 number four.

12 A PROSPECTIVE JUROR: I have two problems. I
13 have a problem in that I am a salesman and we have a
14 major trade show next week. Also have a problem with
15 one of the questions.

16 THE COURT: Okay. Any objection?

17 MR. HAYDEN: No.

18 MR. LEMKE: None, Your Honor.

19 THE COURT: Everybody knows only risk you run,
20 told you yesterday, I try to be cooperative with you and
21 stuff, but you will get sent back to the commissioner of
22 jurors. They may sent you to one of my colleagues. Who
23 I don't know. I don't want to say, may not be as
24 cooperative. So, I reiterate, you know, it's going to
25 be no longer than two weeks here. When you go over

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1 there they can send you on some tobacco case going on
2 for a couple of months. Lot of stuff out there. If
3 don't just make up an excuse to get out of here you
4 could end up in a situation that is, you know.

5 Go ahead.

6 THE CLERK: Marie Ginobbi, G-I-N-O-B-B-I.

7 THE COURT: Good morning.

8 THE CLERK: Eileen Leib, for seat number
9 five.

10 John Birnback, B-I-R-N-B-A-C-K, seat number six.

11 Seat number seven.

12 A PROSPECTIVE JUROR: Sorry, Your Honor. I'm
13 self-employed. I already took a week off. I can't
14 afford two more weeks.

15 THE COURT: Any objection?

16 MR. HAYDEN: No.

17 MR. LEMKE: No.

18 THE CLERK: Daniel Ginther for seat number
19 six.

20 Joseph Tiriro, T-I-R-I-R-O, seat number seven.

21 Ora Jenkins, J-E-N-K-I-N-S, seat number eight.

22 THE COURT: What I am going to do, folks, is
23 basically the fact you're sitting in those chairs tells
24 me everything you heard yesterday you don't have a
25 problem with, what you heard thus far. So, I am going

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1 to give the attorneys a couple of minutes to go over the
2 sheets and then allow them to question you. Okay.

3 No one will have any problem following the law as I
4 give it to you. You heard all the stuff about
5 presumption of innocence, reasonable doubt. You have no
6 problem with any concepts, right?

7 Okay. Counsel, whenever you're ready. Take your
8 time. Look over the sheets, and then we will, you can
9 go when you're ready.

10 Go ahead.

11 (Whereupon, Mr. Hayden questioned the
12 prospective jurors, herein not recorded.)

13 (Whereupon, Mr. Lemke questioned the prospective
14 jurors, herein not recorded.)

15 THE CLERK: First two on the board for two
16 open seats. Cause People.

17 MR. HAYDEN: No.

18 THE CLERK: Defendant.

19 MR. LEMKE: No.

20 THE CLERK: Peremptory People.

21 MR. HAYDEN: Two, Dottino.

22 THE CLERK: Peremptory defense.

23 MR. LEMKE: One, Zuzio.

24 THE CLERK: Next two up, cause.

25 MR. HAYDEN: No.

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1 MR. LEMKE: No.

2 THE CLERK: Peremptory.

3 MR. HAYDEN: No.

4 MR. LEMKE: No.

5 THE CLERK: No peremptory, DiSalvo will be
6 eleven. Ginobbi number twelve.

7 THE CLERK: Now, alternate seat number one,
8 two challenges apiece. Cause People.

9 MR. HAYDEN: No.

10 THE CLERK: Defendant, cause.

11 MR. LEMKE: Yes. She was the one with the
12 photographs.

13 THE COURT: Miss Leib. Want to be heard?

14 MR. HAYDEN: I know when I spoke with her
15 last, she said, yeah, it would be difficult but she said
16 she'd be able to do it. Be able to look at them and
17 evaluate them. Nobody said they will enjoy it. We
18 understand that. She said she will be able to do it.

19 I know Mr. Lemke engaged in more conversation with
20 her. She'd rather be on a different kind of case, but
21 maybe some other ones would rather be on a different
22 kind of case.

23 THE COURT: Okay. Court's recollection is she
24 had tremendous difficulty in dealing with the fact there
25 would be graphic photos, and also finishing up the voir

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1 dire by Mr. Lemke, saying she would not want to sit on
2 this jury if she was in the defense spot. Under the
3 circumstances the application is granted for cause.

4 THE CLERK: Mr. Ginther, number one, People
5 for cause.

6 MR. HAYDEN: This is alternate one.

7 THE COURT: Yes.

8 THE CLERK: Number one.

9 MR. HAYDEN: No.

10 MR. LEMKE: No.

11 THE CLERK: Peremptory.

12 MR. HAYDEN: No.

13 THE CLERK: Defendant.

14 MR. LEMKE: Yes.

15 THE CLERK: Seat number one.

16 THE CLERK: Okay. Again, trying to fill an
17 alternate seat. Number one, People for cause.

18 MR. HAYDEN: No.

19 MR. LEMKE: No.

20 THE CLERK: Peremptory.

21 MR. HAYDEN: Yes.

22 THE CLERK: One left, alternate seat number
23 one, People cause.

24 MR. HAYDEN: No.

25 THE CLERK: Defendant cause.

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1 MR. LEMKE: No.

2 THE CLERK: People peremptory.

3 MR. HAYDEN: I don't think I have one.

4 THE CLERK: Leave two for each seat.

5 MR. HAYDEN: No, she is alternate number one.

6 THE COURT: Well --

7 MR. LEMKE: No.

8 THE COURT: Let's go back to everybody we got
9 rid of here.

10 Off the record.

11 (Whereupon, there was a discussion held off the
12 record.)

13 THE COURT: Let's go on the record.

14 Counsel, we now have a jury of twelve plus one
15 alternate. Looking to get a number two and number
16 three. We had n off the record conference with respect
17 to that, and it's the Court's understanding that both of
18 you are agreeing to consent with respect to the two
19 people, I will now put their names on the record, both
20 you either knocked them out as a peremptory for the main
21 jury; is that correct? You're consenting?

22 MR. HAYDEN: Yes.

23 MR. LEMKE: Yes.

24 THE CLERK: What were the two names.

25 THE CLERK: Alternates?

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1 THE COURT: Yes.

2 THE CLERK: Number two will be Jennifer

3 Zuzzio. People consent to that?

4 MR. HAYDEN: Yes.

5 THE COURT: Defendant.

6 MR. LEMKE: Yes.

7 THE CLERK: Number three Joseph Tiriro.

8 THE COURT: Both sides consent to making that
9 person number three.

10 MR. HAYDEN: Yes.

11 MR. LEMKE: Yes.

12 THE COURT: We have a jury. I will swear them
13 in, admonish them and tell them to come back at two. We
14 will do preliminary stuff now. Take a break, gets the
15 T.V. I'd like to resolve those issues.

16 (Whereupon, the following takes place in open
17 court.)

18 THE COURT: Ladies and gentlemen, Mr. Paoli
19 will address you in a minute, my clerk. We have a
20 jury. We have taken three alternates. And I thank all
21 of you for your time and patience, and particularly the
22 alternates. You will know in a minute who you are.
23 Because that is a difficult position because you stay
24 there for the whole trial but ultimately when it's time
25 for deliberations, you don't go with the jury. You stay

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1 separate. You can't discuss the case.

2 We need the alternates because if a problem arises
3 during the course of the trial we can have that
4 situation where the alternate or alternates would be
5 substituted for a regular juror.

6 So, that is why it's important for you to come in
7 here like the rest of the jury, listen to everything
8 attentively, apply everything you heard throughout this
9 jury selection process. Okay.

10 THE CLERK: Ladies and gentlemen, names I'm
11 about to announce, you have been selected to sit on this
12 jury. When you hear your name announced please remain
13 in your seats. If you don't hear your name, you're
14 excused from this case with the thanks of the Court.
15 And the court officer will guide you and explain where
16 to go from here.

17 The following jurors are selected. Remain in your
18 seat. Anthony DiSalvo, Marie Ginobbi, Ora Jenkins. You
19 will be number one, Jennifer Zuzio will be number two,
20 Joseph Tiriro number three.

21 Okay. Name called remain in your seat. Others
22 again you have the thanks of the court. Have a nice
23 day. Thank you.

24 Will the selected jurors please rise and raise your
25 right hand.

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1 Do you and each of you solemnly swear to try this
2 action in a just and impartial manner to the best of
3 your judgment and render a verdict according to the law
4 and evidence so help you?

5 (Whereupon, the newly selected jurors collectively
6 answered in the affirmative.)

7 THE COURT: Folks, what I am going to do is
8 give you certain instructions right now with respect to
9 your responsibilities and then I am going to ask you to
10 come back here at two o'clock. The rest of the jury
11 will convene at that time. I will give you preliminary
12 instructions on the law and then we will go into the
13 case. Okay.

14 We will not sit Monday. So, you will not have to
15 come Monday. And, I will tell you that later this
16 afternoon we will resume on Tuesday morning. Okay.

17 You must not converse among yourselves or with
18 anyone else upon any subject connected with the trial.
19 You must not read or listen to any accounts or
20 discussion of the case in the event that it is reported
21 by news or other media. You must not visit or view the
22 premises or place where the offense charged was
23 allegedly committed or any other premises or place
24 involved in the case.

25 Prior to your being discharged, you must not

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1 request, accept, agree to accept, or discuss with any
2 person the receiving or accepting of any payment or
3 benefit in consideration for supplying any information
4 concerning the trial.

5 You must promptly report to the Court any incident
6 within your knowledge involving an attempt by any person
7 to improperly influence any member of the jury.

8 You're not to access the Internet or Worldwide Web
9 by any means available to you for the purposes of either
10 learning about this case or to learn about the law and
11 legal issues concerning this case.

12 Please follow the sergeant. I will see you all at
13 two o'clock. Okay. Thank you for your patience.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: At this time, counsel, we will
17 take a fifteen minute break to enable the prosecutor to
18 get the videotape equipment. There are two applications
19 before the Court that I want to rule on prior to any
20 openings so that both the defendant and the People are
21 on notice what the Court will allow and not allow in
22 regard to these applications.

23 One application involves the photographs and I
24 believe, I don't know if it's in here, but also it deals
25 with the video of the crime scene, and I'd like to see

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1 that video outside the presence of the jury.

2 And the other one is an application with respect to
3 eliciting on direct testimony an alleged statement by
4 codefendant.

5 Those are the two applications.

6 MR. HAYDEN: Yes.

7 MR. LEMKE: Yes.

8 THE COURT: I will mark the affirmation by Mr.
9 Hayden with respect to the photographs and/or video as
10 Court exhibit VI. The affirmation submitted by -- the
11 way, this is VI. The affirmation submitted by Mr.
12 Hayden with respect to the codefendant's statement will
13 be marked Court exhibit VII.

14 Okay. Fifteen minutes. Get your thoughts together
15 on those issues.

16 MR. LEMKE: Yes.

17 MR. HAYDEN: Yes.

18 (Whereupon, there was a brief recess in the
19 proceedings.)

20 THE CLERK: Continued case on trial,
21 indictment number 167N-2005, People versus Mark
22 Orlando.

23 People ready to proceed?

24 MR. HAYDEN: Ready, Your Honor.

25 THE CLERK: Defendant ready.

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1 MR. LEMKE: Yes.

2 THE CLERK: Let the record reflect the
3 presence of Mr. Orlando. The sworn jurors are not in
4 the courtroom at this time.

5 THE COURT: On the record. The Court right
6 now out of the presence of the jury is going to review a
7 videotape that the People seek to introduce during the
8 course of the trial.

9 MR. HAYDEN: May I place it, Your Honor?

10 THE COURT: Yes.

11 MR. HAYDEN: That is it, Your Honor.

12 THE COURT: We will mark that as a Court
13 exhibit for purposes of this hearing outside the
14 presence of the jury.

15 THE CLERK: Number VIII, Judge.

16 (Whereupon, Court's exhibit VIII was played in
17 open court.)

18 THE COURT: Mark it number VIII for purposes
19 of what we did.

20 MR. LEMKE: No objection at all, Your Honor.

21 THE COURT: And, Mr. Hayden.

22 MR. HAYDEN: Yes, Your Honor.

23 THE COURT: You made an application. Your
24 application is with respect to this video and also
25 photographs.

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1 MR. HAYDEN: That's correct, Your Honor.

2 THE COURT: Do you want to be heard, Mr.

3 Lemke?

4 MR. LEMKE: Yes. I don't have the specific
5 photographs that Mr. Hayden would be referring to.

6 However, regarding the tape, I believe there are, will
7 be a number of tapes, but regarding the tape that's been
8 marked now as I believe VIII, Court exhibit VIII is it?

9 THE COURT: Right.

10 MR. LEMKE: Clearly I think I would agree with
11 Mr. Hayden it may be probative obviously in the manner
12 in which Mr. Calabrese was found by the officers that
13 had arrived. Clearly he was either worked on by
14 emergency personnel as I don't believe the shirt that's,
15 or the sweat shirt that's been cut, certainly I don't
16 believe Mr. Calabrese arrived there with it cut, but it
17 may have been cut by the emergency personnel when they
18 arrived there. In that sense there may be some propose,
19 probative value to the tape. I don't disagree with
20 that.

21 However, I don't believe there's anything that
22 would be lost by merely turning the color and having
23 this video, if it's introduced at trial, shown to the
24 jury for the same probative value in black and white.
25 It will not lose anything as far as the manner in which

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1 Mr. Calabrese is found.

2 The car that is at the scene, the car that is
3 running. Clearly showing closeups of the victim in this
4 case as it is regarding perhaps bullet wounds to the
5 back of the head is clearly displayed with this being in
6 black and white. The blood that is there, will still be
7 shown in black and white as to the pool.

8 So, I think we can agree there may be probative
9 value to the tape. There's clearly prejudicial value
10 present effect by having closeups of the bullet wounds
11 as well as the blood, all that color is not a necessity
12 for it clearly inflames the jury. They are certainly
13 graphic and horrible to look at but that itself doesn't
14 excuse it from being shown to the jury. But when all
15 probative value is still shown in black and white I
16 think the Court of Appeals in various decisions will say
17 no it should come in, it's probative, however, if it's
18 clearly something which can be shown in black and white,
19 the District Attorney's Office can't show the court
20 where it would lose any probative value being in black
21 and white, then we should take every step to avoid any
22 prejudice to the jury, Your Honor.

23 That is my objection, not for the tape itself and
24 what it shows, but clearly those portions in which
25 they're in color, Your Honor.

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1 THE COURT: Mr. Hayden, the photographs you
2 seek to introduce at trial are photographs --

3 MR. HAYDEN: Those are crime scene
4 photographs. They're ten of them. They have been
5 pulled from twenty-five, thirty photographs. And also
6 they're autopsy photographs that Dr. DeMartino used to
7 explain the sometimes complicated nature of his
8 testimony.

9 And, as far as the color is concerned, I mean blood
10 is red. The color helps jurors identify what is blood
11 and what isn't. Color is essential to the jurors'
12 understanding of the tape just as the images itself
13 essentially to the jurors' understanding of the tape.

14 I would just read a simple quote here from People
15 versus Erickson. Photographs of a deceased person will
16 be deemed inadmissible only if the sole purpose of the
17 offer is to arouse the emotions of the jury and to
18 prejudice the defendant.

19 Defense counsel concedes that there's probative
20 value to this video. Therefore, defense counsel himself
21 establishes with that concession that these photographs
22 and this video should be admissible.

23 THE COURT: Application by the People that has
24 been marked as Court exhibit number VI is granted. The
25 Court feels that the video as well as the photos as

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1 outlined by Mr. Hayden on the record are being offered
2 for their probative value or to corroborate other
3 evidence in the case, and not to heighten any, inflame
4 any prejudice of the jury.

5 Also, in the Court's final charge, there will be a
6 charge to the jury with respect to graphic photos and/or
7 videos and what use the jurors should make of that.

8 MR. HAYDEN: And, the People would urge the
9 court at the time we offer these photographs to review
10 them again, take a look at them, and renew the decision
11 making at that point.

12 THE COURT: Court will, of course, will on
13 every individual objection made by defense counsel rule
14 on their admissibility based on those purely evidentiary
15 grounds. This is merely with respect to the application
16 made by you, and the opposition thereto by Mr. Lemke
17 just so that both sides are aware of the Court's
18 inclination with respect to this video and the photos.
19 The proper foundation not laid at trial, of course, it
20 will not get before the jury.

21 Mr. Lemke, with respect to Court Exhibit VII, which
22 is another affirmation by Mr. Hayden, wherein the
23 application being made to this Court to support the
24 introduction of remarks made to the defendant, what
25 exactly are you asking for the codefendant's statement

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1 Mr. Hayden.

2 MR. HAYDEN: Yes. Detective McGinn confronts
3 the defendant. The defendant has been trying to
4 convince detectives of the legitimacy of an alibi
5 defense he had put together. And it's only when the
6 defendant is confronted by Detective McGinn, with a
7 statement that the codefendant's given it up, he is
8 telling us he did the shooting, you paid him, that the
9 defendant changes his story and comes up with a new
10 story. The story about Herva did it all by himself,
11 that pivotal moment we want to go into and what
12 Detective McGinn said so the jurors understand in
13 context why the defendant was now changing his story.

14 THE COURT: In sum and substance what exactly
15 is that you anticipate the detective would testify?

16 MR. HAYDEN: He will say I confronted him, I
17 told him that the codefendant's giving it up, he's
18 giving it up and he's telling us he did the shooting and
19 he's telling us you made him. No more extensive than
20 that.

21 THE COURT: What is the purpose of offering
22 that evidence?

23 MR. HAYDEN: The purpose of offering that
24 evidence is to establish the context in which the
25 defendant all of a sudden changes his initial story,

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1 which was his alibi story, and now tried to blame the
2 whole thing on Herva Jeannot, that the defendant had
3 nothing do with what happened that night.

4 THE COURT: Mr. Lemke.

5 MR. LEMKE: Your Honor, clearly this Court
6 needs to make a decision regarding what, if any,
7 statements that were made. To clearly start off with
8 hearsay, Bruton issue has previously been decided, that
9 is why both cases are not being tried together. Mr.
10 Orlando's being tried separately and in part under
11 Bruton it's to protect the defendant not being able to
12 cross examine any statements that would be used against
13 him in this case such as the codefendant's Herva Jeannot
14 to paraphrase perhaps even six as a number of statements
15 that Mr. Jeannot had made, as my client allegedly had
16 made, and if we're talking perhaps bout one of the last
17 statements that Mr. Jeannot had made regarding, not to
18 paraphrase, giving it up or giving up the entire thing,
19 opposed to that Mr. Jeannot had shot Mr. Calabrese,
20 obviously I have no opposition to that.

21 However, it's a matter of how much of that
22 statement is going to be permitted, and I would take
23 this is on the People's direct case regarding the
24 detective testifying in the manner in which my client
25 first spoke to one officer then changed again and then

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1 changed.

2 Am I correct, Mr. Hayden?

3 MR. HAYDEN: That's correct.

4 MR. LEMKE: If it's on cross of Mr. Orlando if
5 he takes the stand I am aware of all the concerns
6 regarding opening up any door and the case law which is
7 certainly an issue in addressing the People's direct
8 case as to why my clients would have changed his story,
9 and an officer came in, and in this case Detective
10 McGinn speaks to Mr. Orlando and said, listen, your
11 codefendant has given it up, has said Mr. Jeannot had
12 shot him, and he shot him because you paid him, and then
13 my client says, whatever my client says, obviously I
14 have no opposition because those are statements he made
15 to the detectives. But, I think in regard to what is
16 being said and being paired down, I have no opposition
17 to the fact Mr. Jeannot had indicated that Mr. Jeannot
18 was present and Mr. Jeannot shot him.

19 But I think anything in addition to that, again, is
20 prejudicial. It violates my ability and right to
21 cross-examine the individual that is now accusing my
22 client of that, and I would move to preclude anything in
23 addition to that first portion, Your Honor.

24 THE COURT: Thank you.

25 The application contained in Court exhibit VII is

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1 granted. The Court views that this information that the
2 People are intending to offer in their direct case is
3 not being offered for the truth of the contents of the
4 statement but rather to give a clear picture to the jury
5 what was going on during the interrogation of your
6 client. The Court, accordingly, feels that Crawford V
7 Washington, not the analysis that takes place in this
8 case, but rather Tennessee V. Street, 471 US 409. Also
9 the Court cites the Court of Appeals in People V
10 Reynoso, R-E-Y-N-O-S-O, 2 New York 3rd 820.

11 And, at the time that this evidence is offered to
12 the jury the Court will give a limiting instruction to
13 the jury they're not to consider it for its
14 truthfulness, but rather to help them understand the
15 context in which the interrogation is going on. That
16 same instruction will again be given in the final charge
17 and emphasized again.

18 The application is granted. Note your exception on
19 the record, Mr. Lemke.

20 MR. LEMKE: Thank you, Your Honor.

21 THE COURT: Anything further at this time?

22 MR. HAYDEN: No, Your Honor.

23 MR. LEMKE: Nothing further, Your Honor.

24 THE COURT: We will resume at two o'clock.

25 L U N C H E O N R E C E S S

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1 (Afternoon session.)

2 THE CLERK: Case on trial, indictment 157N-05,
3 People versus Mark Orlando.

4 Appearance for the record, People.

5 MR. HAYDEN: Robert T. Hayden for the People.

6 THE CLERK: People ready?

7 MR. HAYDEN: Ready.

8 THE CLERK: Defendant.

9 MR. LEMKE: Dennis Lemke, 114 Old Country
10 Road, Mineola, New York.

11 We're ready, Your Honor.

12 THE CLERK: Let the record reflect the
13 presence of Mr. Orlando. The sworn jury is not in the
14 courtroom at this time.

15 THE COURT: Mr. Lemke, we premarked
16 twenty-five photos as People's 1 through 25 for
17 identification.

18 Did you have an opportunity to review them?

19 MR. LEMKE: Yes, I have.

20 THE COURT: Would you like to make any
21 objections? This is with respect to what I ruled on
22 earlier, but you had indicated we didn't have the photos
23 in front of you and I agreed and we now have them.
24 Court reviewed them and you have reviewed them.

25 Would you like to make an objection with respect to

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1 them?

2 MR. LEMKE: Yes, Your Honor. Certainly not
3 all of them. There are a number, again, that I think
4 are clearly prejudicial. There's some that for
5 probative value purposes I can go through each one that
6 I would necessarily not object to. I don't know if
7 they're in order, but certainly there's others that the
8 probative value could certainly be achieved again by
9 having black and white photos.

10 I think in looking at some of these they're
11 extremely inflammatory and clearly have no purpose other
12 than to inflame, that the black and white could
13 certainly do the same.

14 And regarding the photograph of Mr. Calabrese, and
15 I am referring now to one photograph in which he is
16 wearing blue shorts, premarked as 25, what's to stop
17 thirty photographs coming in. He is 5'7", I believe,
18 168 pounds, something to that effect, and the medical
19 examiner's report, I think, again show a photograph of
20 him alive. Again, has no probative value. Again merely
21 to insight some type of inflammatory emotions to the
22 jury. I would oppose this as well.

23 THE COURT: Your objection is overruled for
24 the same reasons I stated earlier.

25 With respect to the photo marked number 25 for

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1 identification, of course, that will be subject to the
2 District Attorney, as will for all photos, laying the
3 proper foundation. However, what was put in the
4 District Attorney's affirmation with respect to that
5 photograph as part of the theory of the prosecution's
6 case. So, at this time, your objection on these grounds
7 is overruled. We will deal with it at the time it's
8 sought to be admitted into evidence.

9 Anything further?

10 MR. HAYDEN: No, Your Honor.

11 MR. LEMKE: Nothing, Your Honor.

12 THE COURT: I guess at this time I will let
13 you let in the public.

14 (Whereupon, there was a pause in the
15 proceedings.)

16 THE COURT: Ladies and gentlemen, before we proceed
17 with the trial, I just admonish everyone in the
18 courtroom that during the course of the trial, if
19 there's any outbursts or any talking in front of the
20 jury, I will immediately have you removed from the
21 courtroom.

22 THE CLERK: Ready for the jury, Judge?

23 THE COURT: Yes.

24 THE COURT OFFICER: Ready, Judge?

25 THE COURT: Yes.

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1 THE COURT OFFICER: Jury entering.

2 THE CLERK: Jurors, please listen to when
3 your name is called.

4 Patricia Bologna.

5 A JUROR: Here.

6 THE CLERK: Aileen Nathan.

7 A JUROR: Here.

8 THE CLERK: Louis Quaglia.

9 A JUROR: Here.

10 THE CLERK: Raffat Hayat.

11 A JUROR: Here.

12 THE CLERK: Sally Barnes.

13 A JUROR: Here.

14 THE CLERK: Michael Kirkby.

15 A JUROR: Here.

16 THE CLERK: Thomas Scarfo.

17 A JUROR: Here.

18 THE CLERK: Christopher Delaney.

19 A JUROR: Present.

20 THE CLERK: Jennifer Eichstaedt.

21 A JUROR: Here.

22 THE CLERK: Robert Herrera.

23 A JUROR: Here.

24 THE CLERK: Anthony DiSalvo.

25 A JUROR: Here.

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1 THE CLERK: Marie Ginobbi.

2 A JUROR: Here.

3 THE CLERK: Ora Jenkins.

4 A JUROR: Here.

5 THE CLERK: Jennifer Zuzio.

6 A JUROR: Here.

7 THE CLERK: And Joseph Tiriro.

8 A JUROR: Here.

9 THE CLERK: Case on trial, indictment number
10 167N-05, People of the State of New York versus Mark
11 Orlando.

12 People ready?

13 MR. HAYDEN: Ready, Your Honor.

14 THE COURT: Defense ready?

15 MR. LEMKE: Defendant ready, Your Honor.

16 THE COURT: Let the record reflect the
17 presence of Mr. Orlando and the sworn jurors.

18 Is this jury acceptable to the People?

19 MR. HAYDEN: Yes, Your Honor, it is.

20 THE CLERK: Is this jury acceptable to the
21 defense?

22 MR. LEMKE: So stipulated, Your Honor. Yes,
23 Your Honor.

24 THE COURT: Good afternoon, ladies and
25 gentlemen of the jury.

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1 Again, I thank you for your patience, particularly
2 those of you who were originally told to return this
3 morning. I hope you all got our messages in time. I
4 believe you did.

5 We're at the point in the trial where I will read
6 some preliminary instructions to you, and then we will
7 move onto the testimonial phase of the trial.

8 Ladies and gentlemen, you should take a certain
9 amount of pride and satisfaction from the fact that out
10 of the many prospective jurors brought into the
11 courtroom, you were selected as jurors and alternates.
12 You have probably come to the conclusion that as a
13 result of the jury selection process, we have selected a
14 fair and impartial jury. It's exactly as the criminal
15 justice system intended it to be.

16 We're about to begin the trial of this case
17 concerning which you have heard some details during the
18 process of jury selection. As the trial begins, it is
19 appropriate to make a few observations concerning the
20 orderly procedure of the trial. It is hoped that these
21 observations may be helpful particularly to those of you
22 who are serving as jurors in this court for the first
23 time. The comments and instructions that follow are
24 designed to acquaint you with the separate functions,
25 duties and responsibilities of the Court, counsel, and

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1 injury, and to give you a better understanding of how
2 you as jurors should conduct yourselves during the
3 trial.

4 As you know this is a criminal case which has been
5 brought by the People upon an indictment accusing the
6 defendant of the crime of Murder in the Second Degree.
7 Please keep in mind that this indictment is simply an
8 accusation, a paper writing, and is not in any way
9 evidence of the allegations it contains. It is merely
10 the device used to bring the charge against the
11 defendant.

12 The defendant has plead not guilty to the
13 indictment. According to the law, the People have the
14 burden of proving, beyond a reasonable doubt, each and
15 every element of the crime charged in the indictment.
16 The defendant does not have to prove anything. He is
17 presumed to be innocent of the charge.

18 When I have completed these preliminary
19 instructions, the case will begin with a statement by
20 the Assistant District Attorney as to what the People
21 intend to prove. This is known as the opening to the
22 jury. The law requires the People to make an opening
23 statement to enable the Court and you, the jury, to
24 better understand the testimony and the evidence that
25 will follow at trial. On the other hand, defendant's

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1 attorney is not required by law to make an opening
2 statement. This is because the People have the burden
3 of proving the charge beyond a reasonable doubt. Thus,
4 defense counsel may choose not to make an opening
5 statement but may instead wait to see if the People
6 prove their case. If the defense counsel chooses not to
7 make an opening statement, you must not draw any
8 inference from this. As I have indicated, the defense
9 has the legal right to choose not to open.

10 Bear in mind that the opening statements of the
11 Assistant District Attorney or defense counsel, if any,
12 are not evidence. The evidence upon which you will base
13 your verdict will come to you only from the witness box,
14 or in the form of photographs, documents, or other
15 exhibits introduced and admitted into evidence during
16 the trial.

17 Bear in mind the defendant has no obligation to
18 offer evidence. The entire burden of proof always
19 remains upon the People.

20 After all the witnesses have testified and all the
21 evidence has been heard and received, each of the
22 attorneys will have the opportunity to argue orally in
23 support of their case. These closing arguments are
24 known as summations, and like the opening statements are
25 not to be considered by you to be evidence.

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1 Under our system of law, the defense counsel will
2 sum up first, and the Assistant District Attorney will
3 sum up last. Following summations, I will instruct you
4 on the law which applies to this criminal charge. You,
5 the jury, will then retire to the jury room to
6 deliberate for the purpose of reaching your verdict.

7 This, in brief, is the general outline of the
8 trial. Before we begin with the opening statement,
9 there are certain legal principles which you should keep
10 in mind throughout the trial.

11 You, the members of the jury, are the sole judges
12 of the facts. You and you alone will have the
13 responsibility to find and determine the facts. On the
14 other hand, when I instruct you on the law, either
15 during or at the close of the trial, you must follow my
16 instructions on the law exactly as I give them to you
17 without any hesitation or reservation and even though
18 you may disagree with them.

19 After the opening statement, witnesses will be
20 called to the stand, and after being sworn will be
21 examined and cross examined. The questioning of a
22 witness by the lawyer calling that witness is known as
23 direct examination. The questioning of that particular
24 witness by the lawyer on the opposite side is known as
25 cross examination.

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1 From time to time during the trial you will hear
2 the lawyers object to the asking of a particular
3 question. That means that the lawyer making the
4 objection claims that the question is not a proper
5 question. The Court must rule, as a matter of law, as
6 to whether it is or is not a proper question. You must
7 draw no inference from my ruling. If I find under the
8 rules of evidence that the question is a proper one, I
9 will say objection overruled and the witness will then
10 answer the question. However, if I find that the
11 objection is not valid and the question is improper, I
12 will say objection sustained and the witness will not be
13 permitted to answer the question.

14 When I so rule, you cannot draw any inference
15 either from my ruling or the question itself. It is
16 only a question without an answer. Questions are never
17 evidence. Only answers constitute evidence. Therefore,
18 no inference can be drawn from the mere asking of a
19 question.

20 Now, I suspect there will be times when a witness
21 will answer a question before the Court has ruled on the
22 objection. In such an event if I sustain the objection,
23 I will direct that the answer be stricken. It then
24 becomes your duty to strike it from your mind and
25 disregard both the question and the premature answer.

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1 Do not resent the fact that the attorneys make
2 objections or motions during the course of the trial.
3 That is their job. You must not hold it against either
4 party when or if I rule against them.

5 Exhibits such as photographs, documents, or other
6 tangible objects presented by either counsel during the
7 course of the trial will first be marked solely for
8 identification. Such exhibits are not evidence until
9 and unless they are received into evidence by the
10 Court. When reference is first made during the
11 testimony of a witness to a document, photograph, or
12 other physical or tangible object, it will be marked
13 with a number or letter of the alphabet so that we can
14 identify it and refer to it throughout the course of the
15 trial. Subsequently, if I find that such exhibit may be
16 received into evidence, it will be so marked into
17 evidence. Then and only then does it becomes evidence
18 which you may consider during your deliberations.

19 There are specific rules of law which govern your
20 conduct during the entire trial whenever, during the
21 course of this trial, the court stands in recess, or
22 whenever, during the course of the trial, you are asked
23 to retire to the jury room while the Court and counsel
24 discuss matters of law which do not and must not concern
25 you. You must observe these specific rules of conduct.

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1 In fairness to the People and the defendant, you must
2 keep an open mind throughout the trial.

3 You must reach your conclusions and your ultimate
4 decisions only after having heard all the evidence and
5 my instructions to you on the law, and then only after
6 exchanging views and reasoning together with other
7 members of the jury during your final deliberations.

8 Thus, you must not form or express an opinion as to
9 the guilt or innocence of the defendant until the entire
10 case has been submitted to you by the Court. You must
11 not, during the course of the trial, converse among
12 yourselves or with anyone else upon any subject
13 connected with this trial. This simply means that you
14 must not discuss this case with anyone, not even with
15 your fellow jurors, nor permit anyone to speak with you
16 or in your presence about any subject connected with
17 this trial.

18 While it is a normal human tendency to converse
19 with people with whom one is thrown in contact, you must
20 not during the time you serve on this jury converse,
21 whether in and out of the courtroom, with any of the
22 parties, their attorneys, any witnesses, or anyone
23 else. By this I mean you're not only to refrain from
24 conversing about the case, you are not to converse with
25 any of these people at all even to say hello or pass the

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1 time of day. In no other way can everyone be assured of
2 the absolute impartiality they're entitled to expect
3 from you as jurors.

4 In this same vain you will undoubtedly notice that
5 the attorneys will not converse with you either, not
6 even say hello in the hallways. Do not take this as
7 rudeness on their part. They are only avoiding any
8 possible appearance of impropriety. You can easily see
9 how such an appearance of impropriety might arise, for
10 example, if defense counsel were to see the prosecutor
11 talking to a group of jurors or vice versa without
12 knowing that the conversation did not concern the
13 substance of the case.

14 Therefore, to avoid any such allegations or
15 appearances of wrongdoing, both parties concerned will
16 no doubt take steps to avoid you completely while this
17 trial lasts.

18 You must not read or listen to any accounts or
19 discussions of this case as reported by the newspapers,
20 magazines, radio or television, or by any other news
21 media. You must not visit or view the premises or the
22 place where the offense charged was allegedly
23 committed. Nor are you to visit or view any other
24 premises or place involved or connected with any of the
25 events or scenes described in this case.

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1 Prior to your being discharged, you may not accept;
2 agree to accept, or discuss with any person the
3 receiving or accepting of any payment or benefit in
4 consideration for supplying any information concerning
5 the trial.

6 During the time you serve on this jury, you shall
7 not access the Internet or Worldwide Web by any means
8 available to you for the purposes of either learning
9 about this particular case, or to learn about the law
10 and legal issues concerning this case.

11 Your verdict must be based solely on the testimony
12 that you hear during the trial, the exhibits that are
13 received in evidence during the trial, and my
14 instructions to you on the law. You're bound to accept
15 the rules of law that I give you and you must apply
16 those rules of law to the facts as you find them to be.

17 You must promptly report to me personally any
18 attempt by any person to converse with you, or who in
19 any way improperly attempts to influence you or other
20 members of the jury concerning this case. You must not,
21 however, discuss with your fellow jurors either the fact
22 that a third person has sought to discuss the case in
23 your presence, or the fact that you feel it necessary to
24 bring such an attempt to the attention of the Court.
25 You must bring it immediately to the Court's attention.

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1 Juror number one, by virtue of the fact that you're
2 sitting in that seat, you will be the forelady of the
3 jury, and that means you will just make sure, at the
4 time of deliberations, that deliberations run in an
5 orderly fashion, and that any questions or requests the
6 jury has be put in a written form and signed by you and
7 submitted to the Court.

8 After the opening statement by the Assistant
9 District Attorney and by defense counsel, if any, the
10 People will call their witnesses and proceed to offer
11 evidence and testimony in direct proof of the People's
12 case.

13 Thus the trial has commenced. The defendant, the
14 attorneys and myself would all like to thank you in
15 advance for assuming this important responsibility of
16 serving as jurors in this criminal case. All
17 communication or requests for information are to be
18 addressed to the Court and must be in writing, dated,
19 with the time of day, signed by the forelady, and place
20 in an envelope which will be provided to you and
21 sealed. You should then deliver the sealed envelope to
22 the court officer outside the jury room who will in turn
23 deliver it unopened to the Court.

24 At this time, Mr. Hayden, please proceed with your
25 opening statement.

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1 MR. HAYDEN: Yes, Your Honor.

2 I will take you back to around 8:36 on night of
3 Friday, December 3, 2004. The air outside was cold and
4 clear. Twenty-four year old Bobby Calabrese just pulled
5 up along Broadway, a quite, dim lit street in North Long
6 Beach in an area where there are some abandoned
7 buildings, some business properties, and a boat yard.

8 Bobby was there on business, the gambling
9 business. He made payments, and he took collections.
10 He was there to meet the defendant who had set up the
11 meeting and he was already there waiting for Bobby who
12 was introduced by a mutual friend, a young man by the
13 name of Bobby Flores.

14 The defendant was placing sports bets through Bobby
15 for several weeks. At first the defendant did nothing
16 but win but the defendant's luck changed. He started
17 to lose. That Friday night the defendant owed \$17,000
18 to Bobby, who always made payments while the defendant
19 was winning, and was there now to collect.

20 But the defendant didn't intend to pay Bobby
21 anything. He didn't have the \$17,000. He couldn't make
22 the payment. He had another solution. Unbeknownst to
23 Bobby the defendant had brought along a young man known
24 as Herva Jeannot who was hiding as Bobby stepped outside
25 of his automobile to join the defendant. Armed with

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1 a .44 caliber Magnum revolver Herva Jeannot was crunched
2 down behind the defendant's car and waited. He waited
3 until the defendant and Bobby were together. He waited
4 until they were standing together, talking together,
5 face to face.

6 He waited until this defendant was distracting
7 Bobby just as they had planned. Then he made his move.
8 He moved slowly and as silently as he could. He
9 approached Bobby from behind the defendant who weighed
10 close to four hundred pounds. Then he waited for the
11 defendant's signal. Bobby was relatively small, about
12 5'7", but he was agile enough and athletic enough, being
13 a Kellenberg High School wrestling champion but he
14 didn't have a chance. The defendant gave a signal. The
15 defendant betrayed Bobby with a hug. He hugged Bobby
16 and got a hold of Bobby's hood and pulled it over the
17 sweat shirt from behind. He yanked Bobby's sweat shirt
18 up over his head and to Bobby's left and exposing the
19 right side of the back of Bobby's head and twisted
20 Bobby's right arm back behind his right ear. The same
21 way a hockey player would yank an opponent's jersey over
22 his head during a fight to immobilize him, so Bobby
23 couldn't see, so Bobby couldn't run. So he couldn't get
24 away and hide. So, he couldn't resist. So he couldn't
25 fight back and defend himself. So Herva Jeannot could

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1 execute Bobby, and that is exactly what Herva Jeannot
2 did.

3 Herva Jeannot stepped up on Bobby and fired. The
4 bullet tore through Bobby's right forearm and into his
5 skull from behind his right ear. That bullet did
6 horrific damage to Bobby's brain. Bobby went down on
7 the cold hard surface of the road and laid dying.
8 Herva Jeannot leaned down over Bobby and fired two more
9 shots. Those bullets tore into the left side of the
10 back of Bobby's head, those bullets tore holes through
11 the back of the sweat shirt.

12 The neck of the sweat shirt was still up over the
13 top of Bobby's head and it had settled back and folded.
14 One of those bullets tore three holes through folds in
15 the sweat shirt. It tore into Bobby's skin, through his
16 brain, and out through his right cheek tearing a hole in
17 the upper right chest area of Bobby's sweat shirt.
18 Copper lead bullets were recovered, their core laid in
19 blood right around that hole, right there at the scene.
20 The metal core of that bullet was recovered by Dr.
21 Michael DeMartino during an autopsy. Dr. DeMartino will
22 tell you how he also recovered the other two bullets
23 from inside Bobby's skull.

24 The defendant's plan was simple. Kill Bobby, then
25 tell everyone he already paid Bobby that night, right

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1 there in that vicinity. Someone else must have killed
2 him. Whoever killed him must have taken that \$17,000
3 thereby eliminating the \$17,000 debt. Kill Bobby, then
4 provide an alibi.

5 You will learn within two or three minutes of the
6 murder the defendant used a cell phone to call Wantagh
7 Suzuki about a refund check. Telephone records confirm
8 that he spoke with Frank Walker of Wantagh Suzuki. He
9 will describe his conversation and how the defendant
10 spoke to him and how he told the defendant the owner
11 wasn't there: Wantagh Suzuki was closing for the
12 night. He had to come back the following morning to
13 pick up the check. He will tell you how the defendant
14 was speaking in a normal tone of voice. Business as
15 usual. Absolutely no problem. This is two and-a-half
16 minutes or so after the defendant watched Bobby die.

17 You will learn that the defendant went to Wantagh
18 Suzuki anyway in spite of the fact he was told it was
19 going to be close, that the owner wasn't there, that he
20 couldn't get the check. But it had nothing to do with
21 the check. This was about getting far from the scene of
22 the murder as possible, being seen by people who knew
23 him. This was all about an alibi.

24 You will learn the defendant didn't actually pick
25 up the refund check until three days later. You will

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1 learn that thirty-five minutes or so after the murder,
2 9:12 that Friday night the defendant stopped at a
3 Wantagh branch Citibank and made a \$300 ATM withdrawal,
4 not for the money, but for the receipt, to incorporate
5 the receipt into the alibi.

6 Detective Jim Cereghino of the homicide squad will
7 tell you how he recovered that ATM receipt just where
8 the defendant told the police they would find it, in the
9 defendant's desk, at the collection agency where the
10 defendant worked making telephone calls to people in
11 debt.

12 You will learn that is the only ATM receipt
13 recovered from the defendant, from his home, from his
14 job, from his person. This ATM receipt was all part of
15 the alibi.

16 You will learn at 9:26 that Friday night the
17 defendant telephoned Mr. Tommy Flores and talk to Tommy
18 Flores about the defendant's efforts to retrieve the
19 refund check, as if Tommy Flores cared. Telephone
20 records confirm that call. Tommy Flores will describe
21 his conversation with the defendant then and his
22 complete lack of interest about what the defendant was
23 saying. All part of the alibi. By the time the
24 defendant sat down and spoke with homicide detectives a
25 week later, the alibi was all set, already to go.

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1 Detectives had a conversation with the defendant
2 then. They'll tell you how the defendant initially told
3 them he was with Bobby the night of the murder. He was
4 with Bobby in the vicinity of the murder. He paid Bobby
5 all of the \$17,000. Debt's clear. No more debt. He
6 was with Herva Jeannot. All he did was accompany him to
7 his meeting with Bobby. After he paid Bobby, he drove
8 away. Drove towards Long Beach on his way to Wantagh
9 Suzuki. The last he saw Bobby, Bobby was driving the
10 opposite way towards Oceanside. Alive and well. No
11 problem.

12 Then the defendant went on to talk about the
13 telephone call to Wantagh Suzuki, then the trip to
14 Wantagh Suzuki, and then the stop at the CitiBank
15 branch. The defendant actually told Detective Jim
16 McGinn of the homicide squad the exact time of that
17 transaction, 9:12. It was 9:12 at night. This is a
18 conversation a week later. All part of the alibi.

19 Detective Jack McHugh of the homicide squad will
20 tell you how he reduced what the defendant was saying
21 then to writing. You're going to see that signed
22 written statement in evidence. You're going to hear how
23 the detective kept questioning the defendant because the
24 statement didn't jive with telephone records. The
25 statement didn't jive with a videotape taken from a

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1 nearby storage facility.

2 Now, when the detective didn't accept the
3 defendant's alibi the way he was certain they would, he
4 took a little time, thoughts about it, and changed his
5 story. Now it's different. He was there. He was there
6 at the murder. He saw it all. He was an eyewitness,
7 just an innocent bystander. He happened to be there
8 when Herva Jeannot on his own, out of the blue, with no
9 apparent motive, robbed and murdered Bobby. He told
10 Detective McGinn that he was standing there with Bobby,
11 standing together, talking together, he paid Bobby,
12 that's why the debt was clear. The debt's gone. He
13 hugged Bobby and then the next thing you know there was
14 a gunshot by his right ear and Bobby went down. After
15 Bobby went down, he saw Herva move over to Bobby's car
16 and shut the driver's door. Then he saw Herva come back
17 to Bobby and fire the final two shots, and then he got
18 into his Suzuki Verona and Herva got in along side of
19 him and he was driving Herva around Bobby's body, and
20 the defendant told Detective McGinn that the defendant
21 noticed Bobby's feet was still moving, still twisting.
22 So, he stopped and Herva got out, walked over, and tried
23 to put a couple more bullets in Bobby's head. The only
24 problem is that the gun wouldn't fire. So, Herva went
25 back, climbed in the car, and the defendant drove him

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1 away.

2 The detective asked him, the defendant, if he
3 wanted to sit down with an Assistant District Attorney,
4 if he wanted to tell his story to an Assistant District
5 Attorney. They would do a videotaped statement and the
6 defendant refused, but he did say he would give another
7 written statement, a second written statement.

8 So, an hour later, Detective Cereghino went in to
9 speak with him. The only problem was he couldn't quite
10 keep that second story straight. Detective Cereghino
11 will tell you how the defendant told him that, yeah, he
12 met Bobby out on the street. They were talking
13 together. He paid Bobby. Debt's clear. Don't worry
14 about that. And he hugged Bobby. But then he noticed
15 Bobby's facial expression change and Bobby said
16 something, he didn't catch what it was, that the
17 defendant looked over his right shoulder, and it was
18 Herva about five feet behind him, slightly to his right,
19 facing Bobby from behind, beyond five feet, extending
20 his right hand toward Bobby and there was something in
21 Herva's hand. The next thing you know there's a loud
22 boom. There is a gunshot and Bobby goes down.

23 The only problem with both versions of the
24 defendant's second story is that neither version could
25 be so. Herva wasn't facing Bobby when he fired the

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1 shot. Dr. DeMartino will tell you that all three
2 bullets hit Bobby from behind. All three bullets tore
3 into the back of Bobby's head contradicting what the
4 defendant was saying.

5 See, that second written statement in evidence,
6 you're going to realize, is just another effort on the
7 defendant's part to talk his way out of any
8 responsibility for what he had done. As if Herva
9 Jeannot did this by himself, out of the blue, for no
10 apparent motive. As if Herva Jeannot would have
11 executed Bobby in front of an innocent bystander,
12 eyewitness, who knew him, who could identify him to the
13 police, who could have told them everything, then let
14 the innocent bystander live. As if Herva Jeannot would
15 execute Bobby with no accomplice to get in and out of
16 that unfamiliar area, with no accomplice to lure Bobby
17 to that desolate corner of North Long Beach with a
18 promise of a \$17,000 payment. With no accomplice to
19 distract Bobby, to put him at ease so Bobby wouldn't
20 notice Herva Jeannot approaching him. Wouldn't be so
21 close up to Bobby to contain him, to hug him, get a hold
22 of him, get his sweat shirt over head. Hold him
23 relatively steady so Herva could get in there behind him
24 with that .44 magnum revolver and shoot that clean and
25 accurate fatal shot which is exactly what Herva did.

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1 With no accomplice to serve as a watchman, getaway
2 driver. So Herva could get out of there someway and not
3 be standing there with a gun in his hand with Bobby's
4 dead body.

5 No. The defendant left something out while
6 speaking with the detective. He didn't say a word about
7 the sweat shirt. He didn't say anything about yanking
8 that sweat shirt up over Bobby's head to immobilize him
9 for Herva. Must have slipped his mind.

10 You look at the defendant's second written
11 statement. Like it never happened. But you're going to
12 learn over the course of this trial it did happen.
13 Police officer Peter Vozzo is going to come in and tell
14 you he was the first officer on the scene. He found
15 Bobby's body. He found that sweat shirt over the top of
16 his head, there were bullet holes in the back of that
17 sweat shirt. Those bullets hole align with wounds to
18 the left side of the back of Bobby's head. Dan Brooks
19 will tell you the same thing. He was the first
20 paramedic on the scene. He will tell you how he had to
21 cut away the sweat shirt just to get to his head.
22 You're going to see the sweat shirt in evidence. You
23 will see those bullet holes yourselves. And you're
24 going to hear testimony about how those bullet holes
25 aligned with the wounds to Bobby's body. You will see

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1 blood all over the front of the sweat shirt. You're
2 going to realize something. You're going to realize
3 there were no wounds to Bobby's back or chest, only
4 wounds to his head and face. Blood over the front of
5 his sweat shirt because the front of his sweat shirt was
6 up over Bobby's face as Bobby laid there dying.

7 You're going to hear Bobby was a wrestler. You're
8 going to realize that he was strong enough and agile
9 enough to have gotten away given half a chance. You're
10 going to realize he was strong enough and agile enough
11 to have resisted given half a chance. You're going to
12 realize he wasn't given half a chance. You're going to
13 realize what man could have executed that way. It had
14 to be two men. Had to have Herva Jeannot fire the fatal
15 shot and you had to have this defendant, it was his
16 motive, his powerful motive to eliminate \$17,000 in
17 debt.

18 He was familiar with the area. He knew his way in
19 and he new his way out. He was able to lure Bobby into
20 that desolate corner of North Long Beach with a promise
21 of a \$17,000 payment. He knew Bobby well enough to
22 distract him, to put him at ease, so Bobby wouldn't hear
23 Herva approaching on that lone, quiet, still corner of
24 North Long Beach. He knew Bobby well enough to give him
25 a hug, betray him, get his sweat shirt over his head and

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1 hold him relatively still so Herva could get in there
2 with a .44 Magnum revolver, a heavy bulky gun, and get a
3 clean, accurate fatal shot.

4 Who else was going to be the wheelman? Who was
5 going to be the getaway driver. Someone ha to get him
6 out of there. It was this defendant who told the
7 detective where to find the weapon. He told the
8 detective that Herva tossed it off a bridge along the
9 Wantagh Parkway into a deep body of water, across from
10 some construction work that was going on.

11 You're going to learn that that body of water was
12 the Sloop Channel, the bridge was the Sloop Channel
13 Bridge, not far from Jones Beach. Sergeant Greg
14 Magnifico of the marine bureau will tell you how he and
15 other members went to that location. Divers went down
16 below forty-two feet of water and recovered that 44
17 Magnum revolver just where this defendant said it was.

18 Detective Jim DiBeneditto of the firearms bureau
19 will tell you how he received that .44 Magnum revolver
20 and test fired it. He test fired the bullets with
21 markings unique to the inside of the barrel of the
22 Magnum revolver. He took those test fired bullets and
23 their markings and microscopically compared them to the
24 bullets recovered from Bobby and they matched. All
25 those bullets were fired from the same gun. That

1 same .44 Magnum revolver, the murder weapon, which was
2 recovered, of course, just where this defendant said it
3 would be.

4 In short the People will prove beyond a reasonable
5 doubt that this defendant is guilty as charged of Murder
6 in the Second Degree for planning, setting up, and
7 actively participating in the execution murder of Bobby
8 Calabrese.

9 Thank you again for your kind attention.

10 MR. LEMKE: May I, Your Honor?

11 THE COURT: Yes, Mr. Lemke.

12 MR. LEMKE: Thank you.

13 May it please the Court, Mr. Hayden, Mark, ladies
14 and gentlemen. Good afternoon.

15 As Judge Sullivan has indicated, I have no burden
16 or obligation to give an opening statement. However,
17 after listening to Mr. Hayden I think there's a few
18 things I should address at this point.

19 As you know my client is charged with committing
20 perhaps one of the most vicious and heinous crimes
21 someone could commit against another person. That is
22 murder. This is a charge which my client has vehemently
23 denied. It's because of this denial that each of you
24 sat through our voir dire and are now sitting through
25 the opening statements. We will now sit and listen to

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1 testimony, review any exhibits that are produced in
2 evidence here, view any videotapes that will be
3 introduced here, you'll listen to our summations at the
4 end of this case, listen to and follow Judge Sullivan's
5 law on this case, deliberate and then reach a verdict
6 not only as to Mr. Orlando but to Mr. Calabrese as
7 well.

8 You just heard from Mr. Hayden, very strong,
9 compelling fifteen, twenty minutes of his case. So, we
10 stop everything now, save ourselves two weeks of
11 testimony, Madam Foreperson, stand up with the rest of
12 the jury, face Mark Orlando and say guilty. Why don't
13 we do that now? Why don't we save ourselves two weeks
14 of testimony?

15 I think each of you now know why we wouldn't do
16 that. Because what you heard from Mr. Hayden, as what
17 you hear from me, is not evidence. It's what he intends
18 to prove, as I submit to you at the end of this case he
19 will not prove.

20 Mr. Hayden is an attorney, just as I am an
21 attorney. His responsibility is to bring evidence into
22 this case in a light most favorable to the People, not
23 to Mr. Orlando. But while I have this chance now to
24 talk to you, I think it's important that I point out
25 those factors in this case which will not be in dispute

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1 so you can really focus on what is significant in this
2 case and, that is, what occurred during those 45
3 seconds, because Mr. Orlando spoke to detectives when he
4 was arrested. He spoke to them and told them what
5 occurred. And you will see in a surveillance video,
6 that the forty-five seconds of this incident between
7 Mr. Calabrese and Herva Jeannot and Mark Orlando is
8 consistent with what he told the police before
9 Mr. Orlando was told there was such a video.

10 But what is not going to be contested is that
11 Mr. Orlando knows Thomas Flores, that he knew Mr. Flores
12 for a number of months. My client, in fact, had worked
13 for the last six and-a-half years at Professional
14 Services in Farmingdale, a collection agency. That
15 Thomas Flores worked there, as well as Thomas Flores'
16 girlfriend. None of that will be in dispute.

17 It's not going to be in dispute that my client not
18 only is married, but had tried for a number of years to
19 have a baby. It's not going to be in dispute that Herva
20 Jeannot was a friend, they had met at Professional
21 Services. It is not in dispute. It's not going to be
22 in dispute that after many years of trying, that Mark's
23 wife Diane became pregnant. When I ask you to consider
24 in a second or two how that comes into play in Mark's
25 frame of mind, why he didn't go to the police for a week

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1 after Mr. Calabrese was viciously murdered, because he
2 was murdered in cold blood. That is not in dispute.
3 It's not going to be in dispute that on December 3,
4 2004, Mark's wife was eight months pregnant.

5 It's not going to be in dispute that Mark Orlando
6 gambles. It's not going to be in dispute that Bobby
7 Calabrese was the runner. You will learn what a runner
8 is. He's collecting or paying off debts for the bets
9 for somebody a little higher up. You will learn that
10 the fact that a runner is murdered, as the prosecution
11 may submit to you, the motive does not in any way
12 relieve the debt that he had to the higher ups.

13 It's not going to be in dispute that Mr. Orlando
14 was introduced by Thomas Flores to Mr. Calabrese. None
15 of this is in dispute. It's not going to be in dispute
16 that for six to eight weeks prior to December third,
17 that Mr. Orlando's records will show that the detectives
18 had recovered as well through gambling records both, not
19 only from my client, but from Mr. Calabrese as well.
20 That during those preceding weeks Mr. Calabrese had paid
21 out to Mr. Orlando close to \$37,000. That he's winning
22 every week, and that the previous week and-a-half of
23 December 3rd of 2004, March Orlando had lost about
24 \$8,700 on one week, going into the preceding week, lost
25 about another eight or \$9,000.

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1 It's significant to note that when money is to be
2 paid or money is to be collected, you place your bets
3 for Monday through basically Sunday and you pay off your
4 losses perhaps Monday or Tuesday, and that wages of the
5 bets that were being paid Monday, Tuesday, Wednesday in
6 actuality wouldn't have been owed until further into
7 that week.

8 That is significant in two ways. One I am asking
9 you to consider is what motive he has. You'll see there
10 isn't a motive. He is up over that amount. He tells
11 the detective at some point he has it in a safe, that
12 then on December third he was going to pay him. Because
13 you now need to consider, if he is going to murder him,
14 why is he telling everybody he is going to meet him that
15 night. If he is going there to murder him, because
16 obviously he is there at the scene. There is going to
17 be no dispute. And it's not going to be in dispute that
18 Herva Jeannot shot and murdered Mr. Calabrese in cold
19 blood and took his money.

20 You're going to hear that when they went there on
21 December third at about perhaps 8:36 that evening, that
22 they had both worked together at Professional Services
23 in Farmingdale. Not in dispute. It's not going to be
24 in dispute that they left that Friday together. Why did
25 they leave together? Because my client lives in Bay

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1 Shore. Herva Jeannot lives in Deer Park. They work in
2 Farmingdale. The previous four or five months my client
3 would pick up Herva Jeannot and bring him to work, drop
4 him off and then go home. You will notice that the week
5 after Mr. Calabrese was murdered, my client, out of fear
6 for Mr. Jeannot, I will ask you to consider couple of
7 things, no longer took him to and from work. He tried
8 to avoid him as much as he could because I am going to
9 ask you to now consider, well, again, if this was a set
10 up as the prosecution will argue at the end of this
11 case, well, why is, and Mr. Hayden will argue here's an
12 alibi, he went here, here, here and there, and there's
13 an alibi. He never said I was never there. You will
14 learn when he spoke to the detectives, Mark Orlando in
15 speaking to the detectives, he tells them that when they
16 left that Friday, they went to the gym together, Herva
17 Jeannot and Mark, and they met Thomas Flores and Thomas
18 Flores' girlfriend Barbara at the gym. You will hear
19 from them. That Herva Jeannot was anxious. Herva
20 Jeannot wanted to leave, and Mark was trying to work
21 out. You will learn he had had a number of surgeries to
22 lose weight. He lost about three hundred pounds. He is
23 there. He said, relax, we'll go, don't worry. I have
24 to meet Bobby Calabrese. Going to meet him down in
25 Island Park. Usually meet him there. Not a secret to

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1 anybody. They're going down to meet him. They drive
2 down.

3 You will hear testimony, and this is what you need
4 to consider, because what occurs during that, where's
5 the proof that this is aiding and abetting. There is no
6 dispute Herva Jeannot killed Bobby Calabrese in cold
7 blood. It is for you to consider whether they have
8 proven, beyond a reasonable doubt, that my client aided
9 and abetted, that he played some role in this.

10 The evidence is going to show they got there. The
11 evidence is going to show that they looked for a
12 discreet place to pay him the money as they always do
13 and then leave. It's not going to be disputed, we will
14 introduce a videotape that shows a car waiting on the
15 block which happens to be my client's vehicle and at
16 some point Mr. Calabrese pulls up in his vehicle. It is
17 not in dispute, that lasts about forty seconds before
18 Mark leaves. It's a video in which we don't see much
19 other than you see headlights and brake lights. So,
20 don't expect to see what occurs. You will see at least
21 the timing which is critical, as well as a vehicle.

22 I would ask you to also consider during those
23 forty-five minutes, forty-five seconds, consistent with
24 what Mark told the detective, not the first time, as you
25 learn, because when he was arrested they brought him to

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1 the precinct to talk to one detective, then one doesn't
2 write anything down, then a third detective, Cereghino.

3 What is significant is when he is there, he is
4 there to pay him. You will learn that Mark gets out of
5 the car to pay him, that in the car they had left the
6 gym in, Herva Jeannot took a bag with some gym clothes
7 and other things in it, he was in the front seat, they
8 drove down there, parked, he gets out to pay him as he
9 tells Detective Cereghino, which is consistent with the
10 video, consistent my client. He gets out, hands him the
11 money, there is something that Mr. Calabrese sees over
12 Mark's shoulder, consistent as well with the DNA, as
13 well as the forensic testimony, that the gun had to be
14 shot anywhere from perhaps eight inches to the head to
15 perhaps up to forty-eight inches. Up to four feet.
16 Consistent with what Mark tells Detective Cereghino,
17 that Bobby had fear in his eyes. That Bobby is facing
18 Mark, as I am now, and over Mark's shoulder, Herva
19 Jeannot comes running over. That Herva Jeannot has a
20 gun in his hand. That Mr. Calabrese sees it, and after
21 facing Mark, with his right hand, consistent with what
22 he tells the police, he doesn't know about the
23 ballistics, he doesn't have all these results there when
24 the detective's talking to him, Mark says Bobby, to
25 protect himself, turns at this angle, the bullets comes

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1 in through the arm, through the back of his head at
2 Bobby and Bobby goes down. Shot in cold blood.

3 He also tells Detective Cereghino when he is down,
4 he's then shot two more times in cold blood by Herva
5 Jeannot. It's not going to be in dispute that Herva
6 Jeannot served in the service for two years. He was
7 trained, he knew how to use and shoot weapons. Not
8 going to be in dispute. It's not going to be in dispute
9 that Mark gets into the vehicle, leaves, and now begins
10 to panic. He tells the detective, I wanted everybody to
11 know that Herva Jeannot was with me. I called Wantagh
12 Suzuki. He drove up there. As soon as I got into the
13 car, Herva Jeannot told me when I said what the F did
14 you do, what did you kill him for, he said I would never
15 rob you, you're my friend, I robbed him. This isn't the
16 first person I killed, it's not the last person I'll
17 kill. Your wife is eight months pregnant. You say a
18 word, you will be next, and before I kill you I will
19 kill your wife and unborn baby.

20 Mark gets in the car and calls everybody he can.
21 He runs here, he runs there, he goes home. He doesn't
22 tell his wife. He doesn't sleep. She knows something
23 is wrong. He's sitting downstairs in a chair. He
24 doesn't pick up Herva. They talk about fifteen times
25 that Saturday trying to figure out what is going to

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1 happen, he doesn't know what to do. He doesn't say
2 anything Monday, Tuesday, Wednesday, Thursday, Friday.
3 He goes to work and then home. Fears for his wife.
4 Herva Jeannot works in the same location, same
5 profession. Herva tells him, don't say a word, say a
6 word you're dead. Say a word your wife's going to be
7 next.

8 Friday, they're leaving and they get picked up by
9 the detectives. The detectives meet with Mark. They
10 talk to Mark. He gives his first statement about how he
11 met Bobby, he paid Bobby, but he wasn't there when there
12 was any shooting. Clearly he lied to the detective.
13 That is not going to be in dispute. He was in fear.
14 But also at the same time begin to consider Herva
15 Jeannot was also picked up at the same time, also in the
16 precinct speaking to detectives as well. You will learn
17 that from that evening that he is arrested into the next
18 morning, until about five o'clock in the morning, when
19 Detective Cereghino begins to talk to Mark, there's a
20 detective that is speaking to Mark first, and the
21 detectives, in speaking to Mark, will tell you, when I
22 was talking to Mark I knew Mark wasn't telling me
23 something. Kept asking him what do you want to tell
24 me. Mark kept telling me, you don't understand, you
25 don't understand. I'm afraid. I can't tell you. You

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1 don't understand.

2 It's not until Herva Jeannot tells the detective
3 that Herva Jeannot himself had shot Mr. Calabrese, that
4 Mark then felt at ease that now they're not going to
5 come after Mark. He didn't say anything. Mark didn't
6 spill any beans. He said I didn't know better. I was
7 there, he shot him. I didn't know what to do. I was
8 afraid, not for my safety, but my wife's and unborn
9 baby.

10 At that point, considering that, considering the
11 timing of what Mark said and what was said before that
12 for him then to say something because the issues for you
13 again is what occurred that night. There is no dispute
14 whatsoever Mr. Calabrese was killed in cold blood and
15 Herva Jeannot had shot him. But the angle, the twisting
16 are all consistent with what Mark told the detective
17 before anything took place, before any videotape came
18 into play. It's going to corroborate, since that time,
19 what he told the detective.

20 I am confident if you keep an open mind, that you
21 listen to the testimony of the witnesses, some of which
22 I may not question at all, at the end of this case, you
23 follow the Judge's instructions on the law, deliberate,
24 and reach the only verdict in this case, and that is
25 Mark Orlando is not guilty.

Cardineau - People - Direct

1 Thank you.

2 THE COURT: Yes, call your first witness, Mr.
3 Hayden.

4 MR. HAYDEN: Kathleen Cardineau.

5 KATHLEEN CARDINEAU, called as a witness by the People, having
6 been first duly sworn by the Clerk of the Court, was
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HAYDEN:

10 THE CLERK: Have a seat.

11 State your name, spell your last name, just give
12 your county of residence, please.

13 THE WITNESS: Kathleen Cardineau,
14 C-A-R-D-I-N-E-A-U, Nassau County.

15 THE COURT: Good afternoon.

16 THE COURT: Good afternoon.

17 MR. HAYDEN: May I proceed.

18 THE COURT: Yes, Mr. Hayden.

19 Q Good afternoon, Miss Cardineau.

20 A Good afternoon.

21 Q What is your occupation?

22 A I am a district manager.

23 Q Where do you live?

24 A I live in Barnum Island.

25 Q Is that part of Island Park?

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Cardineau - People - Direct

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1 A Yes.

2 Q Part of North Long Beach?

3 A Yes.

4 Q Where do you live in relation to a 7-Eleven store
5 at the intersection of Broadway and Georgia Avenue?

6 A I live on that same block south of the 7-Eleven
7 store.

8 Q Directing your attention to 8:36 on the night of
9 Friday, December 3, 2004.

10 Where were you then?

11 A I was in my bedroom.

12 Q What were you doing?

13 A I was looking for a book of matches.

14 Q What did you hear then?

15 A I heard three sounds that sounded like gunfire,
16 loud bangs, three.

17 Q How do you know it was 8:36 when you heard the
18 three loud bangs that sounded like gunshots?

19 A Because I turned around and I looked at the Cable
20 Vision box.

21 Q Did it read 8:36?

22 A Yes, it did.

23 Q How much time passed from the first gunshot you
24 heard until the last gunshot?

25 A No more than five or six seconds.

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Cardineau - People - Direct

1 Q Do you remember the sequence of the gunshots?

2 A No.

3 Q Do you remember how much time passed between the
4 first gunshot and the second two?

5 A No, I do not.

6 Q Tell the jury what you did after you heard those
7 three gunshots at 8:36?

8 A I found my matches and I walked back through my
9 house and picked up some bags that I used to feed stray cats
10 and I went outside of my house, down the stoop, got into the
11 car and drove down the block. And as I was driving down the
12 block I could see there was something in the street, and I
13 drove fairly slowly, and as I got closer to where I would
14 park my car to feed the cats, two men came from my left side,
15 and as I got up to them I stopped because there was a young
16 man laying in the street.

17 Q What did you see on the street?

18 A I saw a young man laying face down on the street.

19 Q Did you see any sign of life in him?

20 A No, I did not.

21 Q What happens then?

22 A I got out of my car and of the two gentlemen that
23 had crossed the street, one I knew was the fellow from
24 7-Eleven because he had the red thing on. The other fellow
25 was wearing a baseball cap and the fellow in the baseball cap

Cardineau - People - Direct

1 said to me -- I am sorry. He said, he said, I think he got
2 hit by a car, and I immediately said, no, he was shot. I
3 just knew at that point.

4 Q That was based upon what you heard?

5 A Yes.

6 Q Did someone call the police?

7 A Yes, the fellow from 7-Eleven had a cell phone. He
8 phoned the police.

9 Q Did police arrive?

10 A Yes, they did.

11 Q Did they cordon off the crime scene?

12 A Yes.

13 Q Did your car wind up in that crime scene?

14 A Yes, it did.

15 MR. HAYDEN: Your Honor, may I please have
16 these photographs that have been marked 2 and, 1 and 2
17 for identification shown to the witness, please.

18 THE COURT: Yes.

19 THE COURT OFFICER: The witness has People's 1
20 and 2 for ID.

21 Q Do you see your automobile in both of those
22 photographs?

23 A Yes, I do.

24 Q Is your automobile a black colored car?

25 A Yes, it is.

Cardineau - People - Direct

1 Q Is it to the right of each of those photographs?

2 A Yes.

3 Q As you're looking at them?

4 A Yes.

5 MR. HAYDEN: May I please have 7 and 9 shown
6 to the witness.

7 THE COURT: Yes.

8 THE COURT OFFICER: People's 7 and 9. Witness
9 has them.

10 Q Do you see your black car in both of those
11 photographs?

12 A Yes, I do.

13 Q Is it to the left as you're looking at each of
14 those photographs?

15 A Yes, it is.

16 MR. HAYDEN: May I have those back, please.

17 Q Did your car remain inside the crime scene?

18 A Yes.

19 Q Until when?

20 A Early the next afternoon.

21 Q Did you hear anything before you heard the three
22 gunshots at 8:36?

23 A No, I did not.

24 Q Did you hear anything after you heard the three
25 gunshots at 8:36?

Cardineau - People - Direct

1 A No, I did not.

2 MR. HAYDEN: Nothing further at this time,
3 Your Honor:

4 THE COURT: Thank you, Mr. Hayden.
5 Any cross examination?

6 MR. LEMKE: None at all. Thank you.

7 THE COURT: Thank you, ma'am. You may step
8 down.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Mr. Hayden, please call your next
12 witness.

13 MR. HAYDEN: Brian Atkinson.

14 Brian Atkinson, called as a witness by the People, having
15 been first duly sworn by the Clerk of the Court, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HAYDEN:

19 THE CLERK: Have a seat.

20 State your name spelling, your last name, and give
21 your county of residence.

22 THE WITNESS: Brian Atkinson, A-T-K-I-N-S-O-N,
23 Nassau County, New York.

24 THE COURT: Good afternoon, sir.

25 MR. HAYDEN: May I proceed?

Alkinson - People - Direct

1 THE COURT: Yes, Mr. Hayden.

2 Q Good afternoon.

3 A Good afternoon.

4 Q How old are you?

5 A Fifty-one.

6 Q What is your occupation?

7 A Bonds broker.

8 Q I direct your attention to around 8:37, on the
9 night of Friday, December 3, 2004.

10 Were you in the vicinity of Broadway and south of
11 Georgia Avenue in Island Park?

12 A Yes.

13 Q Is that also called North Long Beach?

14 A Yes.

15 Q Is that in Nassau County, state of New York?

16 A Yes.

17 Q What were you doing then?

18 A I was on my way to buy Lotto tickets at the
19 7-Eleven.

20 Q Were you driving northbound on Broadway?

21 A Yes.

22 Q Did you notice something then?

23 A Yes.

24 Q What did you notice?

25 A Actually my wife noticed there was a body lying in

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Alkinson - People - Direct

1 the street.

2 Q A young man?

3 A A young man, yeah.

4 Q Did you see any sign of life in the young man?

5 A No.

6 Q Any motion?

7 A No.

8 Q Was the young man laying on the surface of the
9 road?

10 A Yes.

11 Q What did you do when you noticed the young man
12 lying on the surface of the road?

13 A We drove right to the 7-Eleven because I didn't
14 have my cell phone with me to get somebody to called the
15 police.

16 Q Did someone call the police?

17 A Yes.

18 Q Did the police arrive?

19 A Yes.

20 Q Did you touch the body before police arrived that
21 night?

22 A No.

23 Q Did you see anyone else touch the body before
24 police arrived that night?

25 A No.

Alkinson - People - Direct

1 MR. HAYDEN: Nothing further, Your Honor.

2 THE COURT: Mr. Lemke.

3 MR. LEMKE: No questions. Thank you.

4 THE COURT: Thank you, sir. You may step
5 down.

6 THE WITNESS: Thank you very much.

7 (Witness excused.)

8 THE COURT: Counsel, approach the bench,
9 please.

10 THE COURT: Ladies and gentlemen, in the
11 gallery, I'd ask you to remain seated while the jury
12 leaves the courtroom.

13 Ladies and gentlemen of the jury, that concludes
14 the proceedings for today. As I had indicated we're not
15 going to resume until Tuesday. So, do not come on
16 Monday. We're going to resume Tuesday. I am going to
17 direct that you come at nine a.m. And, again, I
18 reiterate that you might want to come early because of
19 the parking situation. Hopefully, we do have some
20 delays, I hope to get started somewhere between 9:30 and
21 ten. I am asking you to get here around nine o'clock.
22 Probably behoove you to get here before nine because of
23 the parking situation. Okay.

24 If for some reason there is a problem or whatever
25 the officers will provide you with a number to give us a

Alkinson - People - Direct

1 call. But the quicker we can all assemble, the quicker
2 we can get moving and proceed with the trial.

3 I am going to read the following admonition which I
4 told you all you would hear every time we break. So, by
5 the end of this trial, you will have these admonitions
6 memorized I am sure.

7 You must not converse among yourselves or with
8 anyone else upon any subject connected with the trial.
9 You must not read or listen to any accounts or
10 discussions of the case in the event it is reported by
11 newspapers or other media. You must not visit or view
12 the premises or place where the offense charged was
13 allegedly committed, or any other premise or place,
14 involved in the case.

15 Prior to your being discharged, you must not
16 request, accept, agree to accept, or discuss with any
17 person the receiving or accepting of any payments or
18 benefits in consideration for supplying any information
19 concerning the trial.

20 You must promptly report to the Court any incident
21 within your knowledge involving an attempt by any person
22 improperly to influence any member of the jury.

23 You're not to access the Internet or Worldwide Web
24 by any means available to you for the purpose of either
25 learning about this case, or to learn about the law and

Alkinson - People - Direct

1 legal issues concerning this case.

2 As I have indicated to you previously, I don't mean
3 you can't go on your computer, you can't go on it to
4 look into this case or anything about this case or the
5 law.

6 Okay. Hope you have a good weekend. I will see
7 you Tuesday.

8 THE COURT OFFICER: Please rise and follow me
9 out.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: Counsel, anything further?

13 MR. HAYDEN: Would you like a copy of the
14 Rosario material?

15 THE COURT: Yes.

16 Anything else?

17 MR. HAYDEN: That is it.

18 MR. LEMKE: Nothing, Your Honor. Thank you.

19 THE COURT: Trial stands in recess until
20 Tuesday.

21 THE CLERK: Court exhibit IX.

22 THE COURT: Have a good weekend.

23 (Whereupon, the trial was adjourned to June 7,
24 2004.)

25